

DANIEL G. BOGDEN
 United States Attorney
 J. Gregory Damm
 Assistant United States Attorney
 333 Las Vegas Boulevard South
 Suite 5000
 Las Vegas, Nevada 89101
 (702) 388-6336

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

 Plaintiff,

 v.
 LINDA LIVOLSI, aka LINDA G.
 FINDLEY, aka LINDA GROGG and
 WILLIAM LIVOLSI, JR.,

 Defendants.

Case No.: 2:10-CR-00578-PMP-GWF

**GOVERNMENT'S RESPONSE TO
 DEFENDANT LINDA LIVOLSI'S
 MOTION TO DISMISS COUNTS THREE
 THROUGH EIGHT OF THE
 SUPERSEDING INDICTMENT FOR
 VIOLATION OF 26 U.S.C. §6531 (Doc.
 #153)**

Certification: Pursuant to LCR 12-1, undersigned counsel hereby certifies that this response is filed in a timely manner. Defendant Linda Livolsi's "Motion to Dismiss Counts Three Thru Eight of the Superseding Indictment for Violation of 26 U.S.C. §6531" (CR #153) (hereinafter "Defendant's Motion") was filed and served on July 25, 2014. Pursuant to the Docket Entry, the Government's response is due on or before August 11, 2014. *See* Docket #153.

ARGUMENT

COMES NOW the United States of America, by and through DANIEL G. BOGDEN, United States Attorney, and J. GREGORY DAMM, Assistant United States Attorney, and responds in opposition to the motion filed on July 25, 2014, by Linda Livolsi (hereinafter, "the Defendant"), seeking to dismiss counts 3 through 8 of the superseding indictment for alleged failure to bring those counts within the time period set forth in 26 U.S.C. §6531 (CR #151). The Defendant is charged by way of a Superseding Criminal Indictment (CR # 110). For the reasons enumerated herein, the Defendant's motion should be denied.

1 The Defendant's Motion claims that the government has failed to bring Counts 3 through 8
 2 within the six-year statute of limitations established by 26 U.S.C. §6531. The Defendant does not
 3 dispute that the six-year statute of limitations is the proper period of time for the analysis. The
 4 Defendant's Motion does not identify what date the Defendant believes the six-year statute of
 5 limitations began to run. However, when the correct date is identified, each of counts 3 through 8
 6 has been brought within the six-year period of time.

7
 8 **I. The six-year statute of limitations for Counts 3 through 6 began to run on January 19,**
 9 **2008 and would have expired on January 19, 2014, twelve (12) days after the**
 10 **Superseding Indictment was filed.**

11 The correct statute of limitations period for Counts 3 through 6 is six years. 26 U.S.C.
 12 §6531(5). The six-year statute of limitations for tax evasion by filing a false or fraudulent return
 13 begins to run when the act is committed, which is at the time the returns are filed. *United States v.*
 14 *Habig*, 390 U.S. 222, 222 (1968). The Defendant's Motion incorrectly states that the government
 15 alleges that the Defendant filed her 2003, 2004, 2005, and 2006 tax returns in 2007. The
 16 Superseding Indictment alleges that the Defendant "did willfully make and subscribe a U.S.
 17 Individual Income Tax Return, Form 1040" for each of those years on or about December 30, 2007.
 18 Superseding Indictment (CR #110), at 5-7. The tax returns were not filed until January 19, 2008,
 19 when they were received by the Internal Revenue Service at Austin, Texas. *See* Bates Nos. 015421,
 002834, 002878, and 002903.

20 Therefore, the six-year statute of limitations period began to run on January 19, 2008. The
 21 six-year period would have expired on January 19, 2014. The Superseding Indictment was filed on
 22 January 7, 2014. Therefore, Counts 3 through 6 are timely brought.

23
 24 **II. The six-year statute of limitations for Count 7 began to run on October 15, 2008 and**
 25 **would have expired on October 15, 2014, ten (10) months and eight (8) days after the**
 26 **Superseding Indictment was filed.**

27 The correct statute of limitations period for Count 7 is six years. 26 U.S.C. §6531(4). "The
 28 statute of limitations . . . begins to run from the occurrence of the last act necessary to complete the
 offense, normally, a tax deficiency." *United States v. Carlson*, 254 F.3d 466, 470 (9th Cir. 2000).

1 “A taxpayer normally incurs a deficiency on April 15 of a given year, when tax returns are due.” *Id.*
 2 In this case, the final act occurred on October 15, 2008, when the Defendant failed to file a tax return
 3 after filing for an extension from the ordinary date of April 15.

4 Therefore, the six-year statute of limitations period began to run on October 15, 2008. The
 5 six-year period would have expired on October 15, 2014. The Superseding Indictment was filed on
 6 January 7, 2014. Therefore, Count 7 is timely brought.

7
 8 **II. The six-year statute of limitations for Count 8 began to run on April 15, 2009 and**
 9 **would have expired on April 15, 2015, one (1) year, four (4) months, and eight (8) days**
 10 **after the Superseding Indictment was filed.**

11 The correct statute of limitations period for Count 8 is six years. 26 U.S.C. §6531(4). “The
 12 statute of limitations . . . begins to run from the occurrence of the last act necessary to complete the
 13 offense, normally, a tax deficiency.” *United States v. Carlson*, 254 F.3d 466, 470 (9th Cir. 2000).
 14 “A taxpayer normally incurs a deficiency on April 15 of a given year, when tax returns are due.” *Id.*
 15 The final act occurred on April 15, 2009, when the Defendant failed to file a tax return.

16 Therefore, the six-year statute of limitations period began to run on April 15, 2009. The six-
 17 year period would have expired on April 15, 2015. The Superseding Indictment was filed on
 18 January 7, 2014. Therefore, Count 8 is timely brought.

19 Finally, the Government submits that it will be able to prove its version of facts as alleged
 20 (and that are in dispute) at an evidentiary hearing, should this Court so order. Consequently, the
 21 Government respectfully requests this Court deny the Defendant’s Motion CR #153.

22
 23 Respectfully submitted this, the 29 day of July, 2014.

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 25 DANIEL G. BOGDEN
 26 United States Attorney

27 /s/ J. Gregory Damm

28 J. GREGORY DAMM
 Assistant United States Attorney

CERTIFICATE OF ELECTRONIC SERVICE

I, Pam Mrenak, hereby certify that I am an employee of the United States Department of Justice, and that on this day I served a copy of the following: GOVERNMENT'S RESPONSE TO DEFENDANT LINDA LIVOLSI'S MOTION TO DISMISS COUNTS THREE THRU EIGHT OF THE SUPERSEDING INDICTMENT FOR VIOLATION OF 26 U.S.C. §6531 (CR # 153) upon counsel for all defendants appearing in this matter via the CM/ECF system, by electronically filing said document.

Dated: July 29, 2014

/s/

Pam Mrenak
Legal Assistant to J. Gregory Damm
Assistant United States Attorney
District of Nevada